

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. _____

Petition of Central Vermont Public Service)
Corporation and Green Mountain Power)
Corporation Requesting an Investigation into)
The Establishment of Retail Access)
Policies and Procedures)

MEMORANDUM OF LAW

INTRODUCTION

As described in the accompanying Petition, Central Vermont Public Service Corporation (“Central Vermont” or “CVPS”) and Green Mountain Power Corporation (“Green Mountain” or “GMP”)(together the “Companies”) now seek approval from the Vermont Public Service Board (the “Board” or “PSB”) pursuant to Sections 209, 218, 218c, 225, 231 and 251(d) of Title 30 of the Vermont Statutes Annotated (“V.S.A.”) to: (1) suspend the provision of power supply services (“Generation Service”) to customers located within their respective service territories; (2) amend their respective service tariff obligations to clarify that the Companies retain their exclusive service franchises as providers of electric delivery services (“Delivery Service”) to customers within their respective service territories; (3) establish a “Retail Open Access Tariff” or “R-OAT”) that enables customers located within the Companies’ respective service territories to choose their power supplier from an array of approved energy service providers (an “ESP” or “ESPs”) and to purchase “Generation Service” from such ESPs at market determined prices; (4)

have the Board and the Department of Public Service (the “DPS” or “Department”) select through a competitive bidding process an ESP or ESPs to deliver “Default Service” for energy to customers located within the Companies’ service territories; (5) have the Board and Department select through a competitive bidding process an ESP or ESPs to deliver “Transition Service” for energy to customers located within the Companies’ service territories; and (6) approve revisions and modifications to the Companies’ tariffs to implement retail access within the Companies’ respective service territories as provided for pursuant to the Petition.

In connection with these approvals, the Companies will voluntarily consent, pursuant to 30 V.S.A. §251(d), to the sale of Generation Service by ESPs certified by or registered with the Board to participate in the Retail Open Access Tariff. Nothing in the Companies’ Petition is intended to affect the Board’s continued regulation of CVPS and GMP as the monopoly providers of Delivery Services within their respective service territories in accordance with Title 30 of the Vermont Statutes Annotated. Assuming that the Board determines that it has jurisdiction to exercise a form of regulation of ESPs, this memorandum provides a basis for engaging in streamlined certification and related regulation of such competitive providers under Title 30 and Board precedent. This approach is intended to facilitate the establishment of an effectively competitive marketplace for the sale of power to customers located within the CVPS and GMP service territories.

As described more fully within the Petition and supporting materials, the Companies’ tender of this voluntary filing is made in accordance with their restructuring plan entitled A Working Plan to Restructure a Significant Portion of Vermont’s Electric Utility Industry, filed on March 3, 1999 in Docket No. 6140 (the “Restructuring Plan”). The Petition for the voluntary

establishment of retail access within Central Vermont's and Green Mountain's service territories is expressly conditioned upon approval of all elements of the Companies' Restructuring Plan as set forth in the Petition.

SUMMARY

CVPS and GMP are each the holders of Vermont franchises for the exclusive sale and delivery of electricity at retail within their service areas as established by the Board pursuant to 30 V.S.A. §249 (which currently prevents competition, also called retail access). Under Section 251(d) of Title 30 of the Vermont Statutes Annotated, a regulated electric company with an exclusive service territory can consent to the furnishing of services by others to premises (consumers) located within such service territory, enabling competition and retail choice. In order to facilitate the transition to retail choice for CVPS' and GMP's electricity consumers, the Petition provides for the Companies' conditional voluntary consent to the sale of Generation Service by ESPs certified by or registered with the Board to sell power at retail within the Companies' service territories, in accordance with Section 251(d). With that consent, the Board has the existing authority to allow the competitive provision of regulated service (in this case, Generation Service by ESPs) under Title 30 in a manner that is consistent with and furthers the Vermont Principles on Electric Industry Restructuring.

DISCUSSION

I. CVPS's and GMP's Suspension of their Provision of Generation Service is consistent with the Public Interest.

Pursuant to the Petition, Central Vermont and Green Mountain seek to suspend their respective obligations to provide electric power for sale at retail to their customers ("Generation Service" as defined in the R-OAT attached to the Petition) as presently provided for under the Companies' tariffs now on file with the Board. The Companies make this request to cease providing Generation Service because they believe that the establishment of a competitive marketplace for the sale of electricity to customers is now feasible and may be more likely to produce benefits for consumers than the traditional bundling of power supply and delivery services by a monopoly utility supplier.

When a "company," as defined by 30 V.S.A. §201, seeks to suspend the provision of a service provided for under its tariff, the company must seek a determination from the Board pursuant to 30 V.S.A. §231(b) that such action is consistent with the public interest. Specifically, Section 231(b) provides:

A company subject to the general supervision of the public service board under section 203 of this title may not abandon or curtail any service subject to the jurisdiction of the board or abandon all or any part of its facilities if it would in doing so effect the abandonment, curtailment or impairment of the service, without first obtaining approval of the public service board, after notice and hearing, and upon finding by the board that the abandonment or curtailment is consistent with the public interest; provided, however, this section shall not apply to disconnection of service pursuant to valid tariffs or to rules adopted under 30 V.S.A. 209(b) and (c).

30 V.S.A. §231(b)(1986). When discussing the standards that must be considered under Section 231(b), the Board explains that the statute sets no specific criteria for determining when a proposed utility action is consistent with the public interest. "Essentially, they are a matter of

economics. . .”. Petition of Gas Company of Vermont, Inc. For authority to abandon service in its Springfield service territory, Docket No. 4702, Order of September 9, 1982 at 4. While the factors considered by the Board in Docket No. 4702 are different from those before the Board in this proceeding, an emphasis on understanding the economic factors at work within the electric utility industry is an appropriate means for determining whether the time has come for retail access and the granting of the right to customers to choose their ESP from an array of competing Generation Service marketers.

While Central Vermont and Green Mountain maintain that their respective provision of bundled utility services to their customers has served the public interest and the interests of electricity consumers, in recent years a number of challenges to the monopoly service arrangement have emerged. Energy systems have been marked by profound technological and market changes, including the move to greater wholesale competition, the adoption by the Federal Energy Regulatory Commission (“FERC”) of Order No. 888 establishing open access interstate transmission, the emergence of new energy marketers, the commercialization of new and refined energy efficiency technologies, the licensing of combined-cycle gas generation facilities, the development of more effective wind and biomass technologies, the creation of new dispersed load management systems, and progress on many others innovations. These technological and market changes now permit the introduction of customer choice and retail competition within electricity markets -- which is occurring both regionally and nationally. The introduction of customer choice and power supply competition within Central Vermont’s and Green Mountain’s service territories would allow consumers to enjoy significant flexibility in electric services and rates and permit customers to avail themselves to other benefits that may

best be provided through a competitive electricity marketplace.

When considering the Companies' request, it is useful to bear in mind the nature of a utility's obligation to serve its customers. That obligation is concomitant with the utility's right to exclude competitors from its service territory. Where, as here, a utility suspends its sales in favor of sales to customers by competitors and proposes to remove entry barriers for competitors, it is reasonable to amend the utility's duty to serve. That is the essence of the Companies' proposal.

As such, CVPS and GMP maintain that their suspension of the responsibility to provide electric power for sale at retail under their existing tariffs to customers located within the Companies' respective service territories serves the public interest and should be approved under 30 V.S.A. §231(b).

II. Pursuant to the Petition, CVPS and GMP Will Voluntarily Consent to Retail Access within their Respective Service Areas.

In order to facilitate the transition to retail choice for CVPS' and GMP's electricity consumers, the Petition sets forth the Companies' conditional voluntary consent to the sale of Generation Service by ESPs that are certified by or registered with the Board to sell power at retail within the Companies' service territories. Since CVPS and GMP are each the holders of Vermont franchises for the exclusive sale and delivery of electricity at retail within their service areas as determined by the Board pursuant to 30 V.S.A. §249, such consent is a necessary precondition to retail access by alternative suppliers. Specifically, 30 V.S.A. §251(d) provides:

A company shall not construct or extend its facilities or furnish or offer to furnish its services to premises within the service territory of another company without being

requested to do so by the company in whose territory the premises are located, or unless the public service board, upon petition of the person served or to be served, after notice and hearing, finds and determines that the service rendered by such public utility in whose territory and premises are located is inadequate and will not be likely to be made adequate.

30 V.S.A. §251(d)(1986). Subject to the condition precedent that all elements of the Companies' Restructuring Plan and related elements are approved as described in the Petition, the Petition provides for CVPS' and GMP's consent to the offering and sale of Generation Service by ESPs in accordance with the Retail Open Access Tariff as required under 30 V.S.A. §251(d).

III. The Board can Effectively Regulate Competitive ESPs Consistent with the Policy Directives Contained Within the Vermont Principles On Electric Industry Restructuring.

The Petition establishes Central Vermont's and Green Mountain's conditional voluntary consent to the sale of Generation Service by ESPs certified by or registered with the Board to sell power at retail within the Company's service territories. This will require that the Board establish an effective scheme for regulating the provision of Generation Service by ESPs. The Companies' filing has been specifically designed to enable the Board to register or certify competing ESPs as a precondition to their offering to provide Generation Service to customers located within the Companies' service territories and to assure that the services provided by the ESPs are consistent with the policy directives contained within the Vermont Principles on Electric Industry Restructuring (the "Vermont Restructuring Principles").

As described within the Petition, the Companies propose to implement a Retail Open Access Tariff and establish provisions within their respective Delivery Service Tariffs that will require the ESPs, as a condition for the delivery of the ESPs' energy, to satisfy such certification,

public benefit and consumer protection requirements as are established by the Board. The proposed R-OAT terms include conditions that would enable the Board to remedy wrongs committed by ESPs including the suspension of an ESP's deliveries to customers should the ESP fail to comply with Board requirements. Under this approach, the Board would regulate the sale of Generation Service by regulating the use of the Companies' delivery systems. The Board's authority to regulate the Delivery Services provided by the Companies is well established including specific grants of jurisdiction to regulate the terms and conditions of a filed tariff. *See generally* 30 V.S.A. §§ 209, 218 and 225. These statutory provisions are discussed in greater detail in Section IV of this Memorandum of Law as they relate to the approval of the R-OAT and related Delivery Service tariffs proposed by the Companies.

Alternatively, the Board may conclude that an ESP is a "company" within the meaning of 30 V.S.A. §201(a) and subject the ESP to regulation under the rubric established by Title 30 and Board precedent. This would require that the Board issue the ESP a Certificate of Public Good ("CPG") under 30 V.S.A. §§ 102 and 231 as a precondition to the ESPs sale of Generation Service within the Companies service territories. If the Board determines that an ESP is a "company," recent precedent established in connection with the regulation of telecommunication and wholesale power generation and marketing provides a basis for engaging in the streamlined certification and related regulation of ESPs. This includes precedent for authorizing ESPs to engage in the sale of Generation Service at market determined prices.

While this Memorandum of Law identifies these alternative methods for the Board to consider when establishing its practices for the regulation of competing ESPs, the Companies leave to the Board for decision the threshold question of whether or not an ESP is a "company"

within the meaning of Section 201. Regardless of the Board's decision on this question, the Companies maintain that the Board can effectively regulate the provision of Generation Service in order to further the policy directives contained within the Vermont Principles On Electric Industry Restructuring.

i. Public Service Board Jurisdiction Over "Companies".

Section 203 of Title 30 provides that the Board has jurisdiction over the following described "companies" within the state, and persons or companies owning or operating such companies:

- (1) A company engaged in the manufacture, transmission, distribution or sale of gas or electricity directly to the public or to be used ultimately by the public for lighting, heating or power and so far as relates to their use or occupancy of the public highways;
- (2) That part of the business of a company which consists of the manufacture, transmission, distribution or sale of gas, or electricity directly to the public or to be used ultimately by the public for lighting, heating or power and so far as relates to their use or occupancy of the public highways;

30 V.S.A. § 203 (1986 & Supp. 1998). In pertinent part, 30 V.S.A. §201(a) defines the term "company" to mean ". . . individuals, partnerships, associations, corporations and municipalities, owning or conducting any public service business or property used in connection therewith and covered by the provisions of this chapter. . .".30 V.S.A. § 201(a) (1986 & Supp. 1998) (*emphasis added*). Thus, to be subject to the jurisdiction conferred by 30 V.S.A. §203, the Board will have to determine that an ESP is engaged in a "public service business" under Section 201.

- ii. If the Board Determines that ESPs are “Companies”, Board Precedent Supports the Establishment of Special Policies for the Effective Regulation of Competitive Service Providers.

Should the Board determine that ESPs are “companies”, precedent established in the area of telecommunications and wholesale power regulation supports the establishment of special policies for competitive Generation Service providers. Specifically, the Board has found that it is “reasonable and appropriate to relax the degree of regulatory oversight applied to service providers who do not control bottleneck facilities or possess significant market power” in the provision of regulated services. Investigation into New England Telephone and Telegraph Company’s (NET’s) Tariff filings re: Open Network Architecture . . .Phase II, Module One, Docket No. 5713, Order of 2/4/99 at 98. In this context, the Board concluded that it has the necessary authority to relax the regulatory treatment of non-dominant providers under 30 V.S.A. §§ 203, 218, and 225. Id. at 99, and 13-15. This precedent is apposite to the issues surrounding the regulation of ESPs because the Board reached its conclusions in Docket No. 5713 under Sections 203, 218 and 225 (all of which are provisions that are applicable to the sale of electricity by “companies”).¹ See id.

Establishing a scheme of regulation that is closely tailored for ESPs is important. Since ESPs will sell Generation Service in a competitive environment, cost-of-service regulation is not appropriate. Instead, the market will determine the price that customers will pay for service. The Board’s Order in Docket No. 5713 provides support for the establishment of a forbearance

¹It is important to note, that while the Board has been granted additional authority under 30 V.S.A. §§ 226a and 226b to implement “contract” and performance-based regulation of telecommunication providers, to give providers of basic telecommunications services (primarily dominant incumbents) marketing and pricing flexibility, and under 30 V.S.A. § 227a to relax or suspend regulation of telecommunications services that meet conditions to be considered competitive, the Board’s actions in Docket No. 5713 were not taken under these sections.

policy that limits the application of cost-of-service and rate-of-return regulation. In that proceeding the Board concluded in the case of competitive local exchange companies (“CLECs”) that it can and should forbear from imposing cost-of-service regulation. See id. at 101. That policy, while consistent with the requirements of Title 30, facilitates competition and serves to remove regulatory barriers that might otherwise limit consumers from accessing market offerings. Extending this policy to ESPs should be considered if the Board concludes that ESPs are “companies”.

Should the Board determine that an ESP is a “company”, it will have to define an appropriate method for the filing of tariffs by ESPs. Unlike other facets of regulatory review, the Board has found that the “procedural” requirements of the tariff-related provisions in Title 30, including Sections 218, 225, 226 and 227, require the “filing” of tariffs. Docket No. 5713, Order of 2/4/99 at 47, 101. Section 225(a) provides that “each company subject to the provisions of this chapter shall file . . . schedules. . . showing all rates . . . for any service performed or any product furnished by it within the state, and as part thereof shall file the rules and regulations that in any manner affect the tolls or rates charged” Based on this provision, the Board concluded that it does not have the authority at present to eliminate these filing, review, and approval requirements. Id. at 47-48. However, a conclusion that an ESP must file a tariff for its services does not necessarily imply that the ESP must be subjected to rate-of-return or cost-of-service regulation.

The Board has found that rate-of-return or cost-of-service regulation of non-dominant providers is not necessary to meet the statutory criterion of just and reasonable rates. Docket No. 5713, Order of 2/4/99 at 14-15. Since 1994, the Board has permitted competitive

telecommunications providers to offer customers market determined rates within rate bands set out within the provider's tariffs. See id. (citing Petition of Burlington Telephone Company for a Certificate of Public Good to Operate as a Reseller of Telephone Services Within the State of Vermont, Docket 5012, Order of 5/27/86). These rate band tariffs have been found to satisfy the standards required under 30 V.S.A. §§ 218 and 225. Id. at 102. Applying a similar statutory scheme, the FERC allows wholesale power marketers to file, and make power sales at, market-based rates, concluding that such rates are "just and reasonable." See, e.g., AES Huntington Beach, LLC et al., Docket No. ER98-2184-000, ER98-2185-000, 83 FERC ¶ 61, 100 (1998).² If the Board concludes that ESPs are required to file tariffs the Board can and should consider extending these policies to competitive ESPs to facilitate competition in the sale of Generation Service.³

The Board has observed that there is less of a need for economic regulation in a competitive environment, where dissatisfied customers of one service provider are free to "vote with their feet" by switching carriers and using a competitor's services. Docket No. 5713, Order of 2/4/99 at 60; See Docket No. 5472, Order of 12/24/90 at 214; Docket No. 5071, Order of 10/1/86 at 11; and Docket No. 5012, Order of 5/27/86 at 8. This competition among firms, *or the potential for such competition*, benefits the public by creating pressure on existing service providers to minimize costs, lower prices, improve service quality, and develop new technologies

²Section 205 of the Federal Power Act, 16 U.S.C. §824d(a), requires rates for the sale of electricity to be "just and reasonable," and the FERC has determined that market-based power sales tariffs are just and reasonable and meet the standard, if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and transmission and cannot erect other barriers to entry. See id.

³The Companies note that rate band tariffs would not likely provide adequate pricing flexibility to ESPs in the Generation Service marketplace. This would especially be true for ESPs offering their customers real-time pricing and spot market products. As such, reliance on a standard based upon the FERC precedent may be a more workable approach to the administration of competitive Generation Service Tariffs.

and services offerings.⁴ Consequently, the Board has acted to promote consumer protections in competitive markets through the use of objective norms and a lighter-handed certification method. These processes have included screening functions designed to assure that market participants observe the standards contained in Vermont's statutes and Board rules. Docket No. 5713, Order of 2/4/99 at 60, 106. This approach has been applied to streamline the Board's market participant entry regulation under 30 V.S.A. §§ 102 and 231.⁵ The Board has also relieved certified competitors from the obligation to file periodic financial reports used to assess their ongoing viability (since consumers are protected by their ability to obtain service from other companies, and the Board retains the statutory authority to order production of such reports in the future).⁶ Docket No. 5713, Order of 2/4/99 at 106.

Similarly, the Board has issued blanket financing approvals under 30 V.S.A. §108 to allow competitive provider the flexibility to respond to market conditions. Section 108 requires entities subject to the jurisdiction of the Board to obtain the consent of the Board to various kinds of financing events. 30 V.S.A. § 108 (1986 & Supp. 1998). Section 108 does not, however, mandate a specific level of Board review for such a financing petition. *See* Docket No. 6039,

⁴Docket No. 5713, Order of 2/4/99 at 60 (*emphasis added*), citing Docket No. 4946, Order of 2/21/86 at 5.

⁵To the extent the Board determines to exercise a form of regulation over ESPs, and facilitate entry with a streamlined process as permitted by Title 30, the Board may not be in a position to address or predict every consumer protection issue that may arise (as was the case with relaxed regulation of competitive telecommunications providers and would be the case with any lightly regulated industry). The Board would be free, as it does in the case of telecommunications providers, to condition CPGs on compliance "with any lawful requirement imposed by the Board in [specific dockets] and any other docket or rulemaking proceeding governing the obligations of [such providers] in Vermont." *See Petition of Level 3 Communications, LLC for a Certificate of Public Good*, Docket No. 6195, Order of 5/28/99 at 7, and CPG.

⁶We note that this policy may require reconsideration should competitive ESPs be permitted to provide consolidated billing services on behalf of the distribution companies or other entities such as the newly forming Energy Efficiency Utility. However, as described in the proposed CVPS' and GMP' Retail Access Program, such consolidated billing is not yet contemplated. For a further discussion, please the prefiled direct testimony of William Deehan at pages __ to __, a copy of which has been filed with this Memorandum of Law. Moreover, since system stability and reliability concerns are different for electric service networks, special attention should be paid to the financial positions of ESPs to assure that they do not impose costs on distribution companies and in turn their customers.

Order of 6/29/98 at 19. In cases involving a provider of long distance telecommunications services, the Board has determined that it has discretion under 30 V.S.A. §108 to conduct an abbreviated financial review resulting in “blanket financing approval.”⁷ Using the same rationale, in 1992 the Board expanded “blanket” and financial approval to the cellular communications industry.⁸ Because the rates at issue in those cases were the product of the forces of competition, the Board found that blanket financing approval - i.e., approval to obtain “up to” a specified amount, to be used for a number of stated purposes - was warranted. Docket No. 6039, Order of 6/29/98 at 20. In a recent case, the Board explained that USGen New England, Inc. is a competitive energy supplier and as such requires the flexibility to respond to market conditions. *Id.* at 21. The Board granted USGen New England, Inc. “blanket” financing approval to obtain financing up to \$3 billion. If the Board determines that financing approvals are required for ESPs, it should consider extending its practice of blanket financing approvals so ESPs can respond to market conditions and so that ESPs do not view the Vermont regulatory regime as a barrier to their participation in the Companies’ Retail Access Program.

The Vermont Restructuring Principles call for the continued, and in some respects expanded, provision of public benefits as Vermont utility service territories move towards a more competitive electric industry. These include consumer protection, product disclosure and environmental protection features. As set forth within the Companies’ Retail Access Program,

⁷*Id.* citing Petition of Burlington Telephone Company, Docket No. 5276, Order of 5/3/88 at 5; Petition of Burlington Telephone Company, Docket No. 5316, Order of 2/7/89 at 6.

⁸Docket No. 6039, Order of 6/29/98 at 20. *See* Docket No. 5454, Order of 1/8/92 at 45. “The primary purpose for financing review is to ensure that utilities do not incur unnecessary expenses which can later be collected from customers. Where rates are not tied into regulatory costs of service as established by the Board, but are the product of the forces of competition, there is lesser need for detailed prior review of such financings.”

ESPs will be required to satisfy the Board's requirements that are established to meet these objectives. Alternatively, the Board may impose these requirements directly upon ESPs through the ESP certification and registration process. Under this alternative, such requirements could be imposed through the flexible administration of the 30 V.S.A. §218c least-cost planning statute. They could also be imposed as conditions to an ESPs CPG through the review processes established under 30 V.S.A. §§ 102 and 231. Under either approach, an ESP's compliance with the policies established under the Vermont Restructuring Principles can be accomplished.

When considering the Companies' Petition, it is import for the Board to consider how and under what circumstances it will certify ESPs to sell power to customers located within the CVPS' and GMP' service areas. If the regulatory requirements applied to ESPs become barriers to their entry into the Vermont market, consumers will miss out on the opportunity for vigorous competition in the sale of Generation Services. Thus, the Companies have provided this discussion to demonstrate that Board precedent can be applied flexibly to tailor a regulatory scheme that is appropriate to the issues attendant to the certification and registration of ESPs. This discussion also demonstrates that under either strategy, the Board can develop a system to effectively regulate ESPs in order to further the policy directives contained within the Vermont Restructuring Principles.⁹

⁹For additional discussion, please see the Companies' Statement of Compliance with the Vermont Principles on Electric Industry Restructuring that accompanies this Memorandum.

IV. The Terms and Conditions Contained within the Proposed Retail Open Access Tariff and related Utility Delivery Service Tariffs are Just and Reasonable.

To implement retail access and customer choice within the CVPS and GMP service areas, the Companies have proposed that the Board approve modifications to the terms and conditions of the Companies' respective tariffs. This includes the introduction of a Retail Open Access Tariff. These modifications have been specifically designed to facilitate a neutral playing field for participating ESPs while advancing the goals and policy objectives embodied in the Vermont Restructuring Principles made applicable to the review of the instant Petition by the Board's Order of June 24, 1999 in Docket No. 6140-a. For further discussion, please see the Companies' Statement of Compliance with The Vermont Principles on Electric Industry Restructuring included with the Petition.¹⁰

The terms and conditions of an electric utility's tariff may be approved when they are found to be just and reasonable. A utility has "implied power to adopt reasonable and lawful regulations, without unjust discrimination, for the conduct of its business." Hawkins v. Vermont Hydro-Electric Co., 98 Vt. 176, 181 (1924). When considering the import of 30 V.S.A. §209(a)(4), the Court explains that while this section gives the Board a broad authority to deny a regulated company the right to subject their customers to unreasonable, arbitrary or discriminatory rate or service practices, "[t]here are broad limits, however, within which the regulated company is permitted and expected to exercise freely its proper managerial competence." Carpenter v. Home Telephone Co., 122 Vt. 50, 53 (1960). Similarly, the Court recognizes that "[t]o substitute its regulations for those which a utility has previously adopted

¹⁰The Companies note that no prices or charges are proposed as a part of this filing. Such terms will be brought to the Board for approval as part of the rate cases contemplated by the Companies' Restructuring Plan

and filed, the Board must first find the individual company's regulations to be unjust, unreasonable, insufficient, unjustly discriminatory, or preferential under 30 V.S.A. 218." In re Vermont Welfare Rights Organization, 132 Vt. 622, 626 (1974).

Consistent with these precedents, the Companies maintain that the restatement of their tariffs to clarify that the Companies' retain their exclusive franchises for the provision of Delivery Services and establishment of a Retail Open Access Tariff that permits consumers to purchase Generation Services from a certified ESP is a just and reasonable approach for the voluntary establishment of customer choice. The tariffs, as amended, contain terms and conditions that are just and reasonable. As noted in the Petition, rates for Delivery Service will be addressed in the process following a series of actions outlined in the Company's Restructuring Plan. They will ensure delivery of service in accordance with safeguards approved by the Board including any modification by the Board in its discretion.

V. The Board and Department can issue a Request for Proposal for the Establishment of "Default" and "Transition" Service Offerings.

As part of the Petition, the Companies request that the Board and Department issue a request for proposal to select an ESP or ESPs to provide "Default" and "Transition" service for customers.¹¹ As proposed, the establishment of Default Service would assure that there is a provider of last resort. Transition Service is intended to provide customers a soft landing into the new competitive marketplace. Both of these services would be available to the Companies' customers and their delivery would be facilitated as part of the provision of Delivery Service by

¹¹ Alternatively, the Companies will consider providing Transition Service if their provision of the service helps to maximize power supply mitigation and appropriate mechanisms are developed to provide the Companies recovery of their costs incurred in providing this service.

CVPS and GMP.

The Companies believe that the use of market means to solicit competitive providers of electricity to provide Default and Transition Service is superior to reliance on the integrated monopoly structure for the provision of such services for the same reasons that the Companies maintain that their suspension of the provision of power supply service promotes the public good. Namely, the competitive marketplace for the sale of electricity would enable consumers to receive competitively priced Default and Transition Service.

CVPS and GMP maintain that the Board is authorized to promulgate the proposed requests for proposal pursuant to their authority under 30 V.S.A. §209. This section grants to the Board authority over the operation and conduct of regulated utility businesses including the provision of services like “Default” and “Transition” service. As proposed by the Companies, the Board and Department would issue the request for proposal and select the winning bidder or bidders to provide these services. The terms and conditions of these services would be set forth in the tariffs on file with the Board which contain safeguards approved by the Board. In this way, the customer and not the Board or the Companies would be the purchaser of the new services.

In the alternative, the Companies note that the Department is authorized to enter into power purchase and sale arrangements at both wholesale and retail. *See* 30 V.S.A. §§ 212 *et seq.* Accordingly, the existing statutory scheme, when read as a whole, establishes a mechanism under which the Department could contract with the Default and Transition Service providers for the purchase and resale of such services.

Accordingly, the Companies maintain that the Board and Department are fully authorized to issue a request for proposal for the establishment of Default and Transition Services and that

such services can be established using certified or registered ESPs for the benefit of the Vermont consumers receiving Delivery Service from the Companies.

CONCLUSION

In conclusion, CVPS and GMP have described herein the legal basis for the Board actions requested by the Petition. In addition, the Companies have provided the Board a legal basis for the regulation of competitive ESPs in a manner that is intended to facilitate retail access and customer choice that furthers the policy objectives established by the Vermont Restructuring Principles should the Board determine that ESPs are subject to Board jurisdiction pursuant to Title 30. Accordingly, Central Vermont and Green Mountain urge the Board to take the specific actions requested in the Petition in order to facilitate an orderly transition to a competitive electricity marketplace for the Companies' customers and to allow the Companies to restructure their utility businesses as proposed in the Petition.

DATED at BENSON, VERMONT this 23rd day of November, 1999.

RESPECTFULLY SUBMITTED,

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Dated November 23, 1999

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